IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 192 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

GUJARAT MINISTEEL LIMITED

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
MR BR SHAH for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the

following question of law for opinion of this Court in respect of Assessment Years 1977-78 and 1978-79 :-

"Whether in law and on facts the assessee was entitled to depreciation on the building, plant & machinery and electrical installations for the A.Ys. 1977-78 and 1978-79 ?"

2. The assessee is a Limited Company and was running a mini steel plant. The mini steel plant started its commercial production in December, 1974. The plant was running till August 6, 1975. There was a glut thereafter in the steel market and the assessee had also labour problem. Consequently, the plant could not run between the period from August 7, 1975 and April 1978. The plant was restarted in May, 1978. The assessee in assessment year 1977-78 did not claim depreciation before the ITO. However, an additional ground was taken up before the CIT(A) and it was indicated that due to glut in the steel market and labour problem, the assessee was having the passive use of its building, plant, machinery as well as electrical installations and, therefore, entitled to depreciation. The CIT(A) accepted the claim of the assessee for the assessment years 1977-78 and 1978-79. The revenue challenged the finding of the CIT(A) before the Tribunal. In view of difference of opinion, the point was referred to the third Member of the Tribunal who held that there was passive use of the plant and machinery and, therefore, the assessee was entitled to depreciation on the building, plant, machinery and electrical installations.

3. We have heard the learned counsel for the parties. In our view, the controversy raised in the present reference is concluded by the decision of this Court in Khimji Visram & Sons vs. CIT, (1994) 209 ITR 993. In the said case, the assessee-Company carried on business in cotton on a wholesale basis. It had its office in Ahmedabad. For expansion of its business activities, it purchased a premises in Bombay in May, 1975 and for furnishing them, it handed over its possession to its agent and after furnishing and repairs were over, it commenced its business from January, 1977 from the said premises. The assessee claimed deduction of ground rent, maintenance charges, municipal taxes and depreciation in respect of the premises for the assessment year 1976-77. The assessee's claim was allowed by the Tribunal. On a reference, the High Court has held as under :-

"The general principles relating to business

> expenditure are - (a) section 37 of the Income-tax Act, 1961 is required to be construed liberally; (b) section 37 is of general nature and it operates in a wide range covering all expenditure laid out or expended wholly and exclusively for the purposes of the business or profession, which is not capital in nature or personal expenses of the assessee; (c) it may take into account not only the day-to-day running expenses of a business but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process and assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commencing or for the carrying on of a business; it may comprehend many other acts incidental to the carrying on of the business; (d) unless there is express or implied prohibition under other provisions of the Act, if the expenditure is covered by the provisions of section 37, then the necessary deduction is required to be given; (e) the words "profits and gains" in trade are to be understood in their natural and proper sense, i.e. in a sense in which it is understood by a prudent businessman. Therefore, unless the Legislature intended a departure from the principle that an expenditure laid out or expended wholly and exclusively for the purposes of the business and which expenditure is not capital in nature or personal expenses it should not be allowed in computing the income from the business, deduction should be granted for the said expenses; (f) sections 30 to 36 deal with specified expenses and for specific purposes. The nature of expenditure in those sections would be relatable only to the purposes mentioned therein."

4. In view of the principle laid down by the High Court in the above referred to decision, we are of the opinion that the assessee was entitled to depreciation on the building, plant, machinery and electrical installations for the assessment years 1977-78 and 1978-79. The reference is answered in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-